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No. 174

In the Supreme Court of the United States

OCTOBER TERM, 1963

EUGENE DONALD MIMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

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No. 174

EUGENE DONALD METZ, PETITIONER

v.

UNITED STATES OF AMERICA

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 12–16) is reported at 312 F. 2d 199.

JURISDICTION

The judgment of the court of appeals was entered on January 22, 1963. A petition for rehearing en banc was denied on April 30, 1963. The petition for a writ of certiorari was filed on May 31, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

891-179—63—1

QUESTIONS PRESENTED

1. Whether the United States Attorney was properly permitted to cross-examine a government witness on the basis of her previous written statement.

2. Whether petitioner's conviction was based upon affirmative admissible evidence.

3. Whether the trial court gave proper instructions upon the element of intent in a prosecution for the interstate transportation of a girl for immoral purposes.

STATEMENT

An indictment in two counts charged petitioner and Kenneth Eugene Miller, alias "Blackie", with conspiracy to violate the Mann Act, 18 U.S.C. 242 (Count 1), and petitioner alone with the substantive violation by transporting a girl from Newport, Kentucky, to Chicago, Illinois, on March 29, 1961, for the purpose of prostitution (R. 3–5). After a jury trial in the United States District Court for the Eastern District of Kentucky, both defendants were found guilty as charged. Petitioner was sentenced to concurrent terms of five years' imprisonment (R. 82). The court of appeals affirmed as to petitioner, but reversed as to Miller, holding that his identity as the individual referred to as "Blackie" had been insufficiently established (312 F. 2d 199).

The principal government witness was Miss Mae Deloris Garland, the alleged victim, age fifteen at the time of trial. Miss Garland was reluctant to testify as to some matters and the court granted the Assistant United States Attorney permission to cross-examine her as a hostile witness (R. 11, 12, 15). She did testify to the following facts. On the evening

of March 28, 1961 (although she was not positive about the date (R. 22)) at the "Silver Slipper", a night club in Newport, Kentucky (R. 12, 21, 30), she was introduced to petitioner, who said something about going to Chicago on some kind of business. Miss Garland asked to go along, but petitioner said he was afraid that he might get into trouble if he took her. She told him that she was nineteen years old and he agreed to take her (R. 43; 17).

Petitioner said that "Blackie" would help her out in Chicago, but that she would have to talk to him (R. 23). Petitioner gave her about ten dollars and they left for Chicago that night (R. 17, 30, 33). When they arrived, petitioner took her to a hotel and introduced her to Blackie as "Susie". Petitioner asked Blackie whether she would be "all right", to which Blackie replied that she was "fine" (R. 18-20). Blackie told her that she was supposed to work as a prostitute (R. 23). He had her hair fixed and assisted her with some necessary shopping. He then took her out on Highway 87 to a house where two other girls worked and told the man in charge that she would work there (R. 23-26). Using the name "Susie Carter", she engaged in prostitution for about two days, paying part of her money to Blackie (R. 25-28). Blackie then told her that she had better return to Newport, that he was afraid he would get in trouble (R. 28). There was no cross-examination of the witness.

A filling station operator and a bartender, both of whom were employed on Highway 87, testified that

Miss Garland engaged in prostitution (R. 37–38, 40–41). There was evidence of a telephone call from petitioner's residence in Mount Healthy, Ohio, to the residence of Kenneth Eugene Miller in Chicago, on March 29, 1961, and a call from the Miller residence to petitioner's residence on the same date (R. 45–49). An F.B.I. agent testified that in the course of an interview with petitioner, the latter stated that he had known Blackie Miller in Chicago for several years and always visited him when he was in Chicago (R. 54).

ARGUMENT

Cross-examination of Miss Garland as a hostile witness based upon her prior written statement to the F.B.I. agent was entirely proper in the circumstances. She was an obviously reluctant witness, who was unwilling even to give the place of her residence until specifically directed to do so by the court. Petitioner's contention that his conviction rests on Miss Garland's prior statement is incorrect. The positive testimony which she gave in open court did show conduct by petitioner which justified the jury's conclusion that he took her from Kentucky to Chicago for the purpose of having her engage in prostitution.[1]

Equally lacking in merit is the contention that the jury was inadequately instructed that the unlawful

[1] Her testimony also supported the inference that he conspired so to do with a person to whom Miss Garland referred only as "Blackie". However, this is not important, in view of the concurrent nature of the sentences imposed.

purpose of the transportation must have been that of petitioner, rather than of the victim. The charge to this effect was explicit and incapable of being misunderstood.[*]

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[*] The court's charge included the following (R. 72-73):

"You are instructed that if the evidence discloses that the defendant Metz did not transport Doloris Garland from the Eastern District of Kentucky to Chicago, Illinois, with the intent that she should there engage in prostitution or other immoral practices, then you must find the defendant Metz not guilty.

"Now, that is simply this, any person may take a woman from one state to another, that doesn't mean that you can't transport a woman from one state to another, and Metz had a right to take this girl if she wanted to go, as far as this case is concerned, to Chicago or New York or any place else, if he had no intent in his mind at the time she was going along with him or at the time that he left the State of Kentucky, of subjecting her to prostitution or immorality. In other words, any one of you might take a neighbor girl to Cincinnati. That wouldn't mean because you had crossed the state line that you had violated the white slave law. And so Metz' intention, according to the statement of his counsel, is if she went along with him, it was with no intention on his part of doing any more than giving her a ride to Chicago and he didn't know what she was going to do when he got there and he asked her, and if he gave her any money, it was only out of a philanthropic spirit of seeing her through until—for a few days until she could find a job, but he had no idea of prostituting her or using her in any way or causing her in any way to engages in immorality or prostitution or debauchery." See also R. 69, 70, 75, 76, 77, 78.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE, 1963.